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PART II—Section 2

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इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 29th December, 1989:—

BILL No. 99 OF 1989

A Bill to provide for the establishment of a Broadcasting Corporation for India, to be known as Prasar/Bharati, to define its compositions, functions and powers and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fortieth Year of the Republic of India, as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prasar Bharati (Broadcasting Corporation of India) Act, 1989.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint.

2. In this Act, unless the context otherwise requires,—

(a) "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Director-General

Short
title,
extent
and com-
mence-
ment.

Defini-
tions.

All India Radio of the Union Ministry of Information and Broadcasting;

(b) "appointed day" means the date appointed under section 3;

(c) "broadcasting" means the dissemination of any form of communication by the wireless transmission of writing, signs, signals, pictures, images and sounds of all kinds by means of Hertzian waves intended to be received by the public either directly or through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly;

(d) "Board of Governors" means the Board of Governors of the Corporation;

(e) "Broadcasting Council" means the Council established under section 13;

(f) "Chairman" means the Chairman of the Corporation appointed under section 4;

(g) "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under section 3;

(h) "Doordarshan" means the offices, kendras and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Director-General Doordarshan of the Union Ministry of Information and Broadcasting;

(i) "Executive Governor" means the Executive Governor appointed under section 4;

(j) "Governor" means a Governor of the Board of Governors;

(k) "Governor (Finance)" means the Governor (Finance) appointed under section 4;

(l) "Governor (Personnel)" means the Governor (Personnel) appointed under section 4;

(m) "kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;

(n) "Nominated Governor" means the Governor nominated by the Union Ministry of Information and Broadcasting under section 3;

(o) "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;

(p) "notification" means a notification published in the Official Gazette;

(q) "Part-time Governor" means a Part-time Governor of the Board of Governors appointed under section 4, but does not include the Nominated Governor;

(r) "prescribed" means prescribed by rules made under this Act;

(s) "Recruitment Board" means a board established under sub-section (1) of section 10;

(t) "regulations" means regulations made by the Corporation under this Act;

(u) "station" means any broadcasting station with studios or transmitters or both and includes a relay station;

(v) "Whole-time Governor" means the Executive Governor, Governor (Finance) or Governor (Personnel) and includes the Chairman;

(w) "year" means the financial year.

CHAPTER II

PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA)

3. (1) With effect from such date as the Central Government may, by notification, appoint in this behalf, there shall be established for the purposes of this Act a Corporation, to be known as the Prasar Bharati (Broadcasting Corporation of India).

Establishment or composition of Corporation.

(2) The Corporation shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The headquarters of the Corporation shall be at New Delhi and the Corporation may establish offices, kendras or stations at other places in India and, with the previous approval of the Central Government, outside India.

(4) The general superintendence, direction and management of the affairs of the Corporation shall vest in a Board of Governors which may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation under this Act.

(5) The Board of Governors shall consist of—

- (a) a Chairman;
- (b) one Executive Governor;
- (c) one Governor (Finance);
- (d) one Governor (Personnel);
- (e) six Part-time Governors; and

(f) One representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry.

(6) The Corporation may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties:

Provided that all or a majority of the members of each committee shall be Governors and a member of any such committee who is not a Governor shall have only the right to attend meetings of the committee and take part in the proceedings thereof, but shall not have the right to vote.

(7) The Corporation may associate with itself, in such manner and for such purposes as may be provided by regulations, any person whose assistance or advice it may need in complying with any of the provisions

of this Act and a person so associated shall have the right to take part in the discussions of the Board of Governors relevant to the purposes for which he has been associated, but shall not have the right to vote.

(8) No act or proceeding of the Board of Governors or of any committee appointed by it under sub-section (6) shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board of Governors or such committee; or

(b) any defect in the appointment of a person acting as a Governor or a member of such committee; or

(c) any irregularity in the procedure of the Board of Governors or such committee not affecting the merits of the case.

Appoint-
ment
of Chair-
man and
other
governors.

4. (1) The Chairman and the other Governors shall be appointed by the President of India on the recommendation of a committee consisting of—

(a) the Chairman of the Council of States;

(b) the Chairman of the Press Council of India established under section 4 of the Press Council Act, 1978; and

(c) one nominee of the President of India.

(2) No appointment of a Governor shall be invalidated merely by reason of any vacancy in, or any defect in the constitution of, the committee appointed under sub-section (1).

(3) The Chairman and the Part-time Governor shall be persons of eminence in public life; the Executive Governor shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism; the Governor (Finance) shall be a person having special knowledge or practical experience in respect of financial matters and the Governor (Personnel) shall be a person having special knowledge or practical experience in respect of personal management and administration.

Powers
and
functions
of
Chairman
and
Executive
Governor.

5. (1) The Chairman shall perform, exercise and discharge such functions, powers and duties of the Corporation as the Board of Governors may delegate to him.

(2) The Executive Governor shall be the Chief Executive of the Corporation and shall, subject to the control and supervision of the Chairman, exercise such powers and discharge such functions of the Board of Governors as it may delegate to him.

Term of
office,
condi-
tions of
service,
etc., of
Chair-
man and
Gov-
ernors.

6. (1) The Chairman, the Executive Governor, the Governor (Finance) and the Governor (Personnel) shall be Whole-time Governors and every such Governor shall hold office for a term of six years from the date on which he enters upon his office.

(2) The term of office of Part-time Governors shall be six years, but one-third of such Governors shall retire on the expiration of every second year.

(3) As soon as may be after the establishment of the Corporation, the President of India may, by order, make such provision as he thinks fit

for curtailing the term of office of some of the Part-time Governors then appointed in order that one-third of the Governors holding office as such Part-time Governors shall retire in every second year thereafter.

(4) Where before the expiry of the term of office of a person holding the office of Chairman, or any other Governor, a vacancy arises, for any reason whatsoever, such vacancy shall be deemed to be a casual vacancy and the person appointed to fill such vacancy shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(5) The Chairman and other Whole-time Governors shall be entitled to such salaries and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salaries and allowances and the conditions of service shall not be varied to their disadvantage after their appointment.

(6) The Part-time Governors shall be entitled to such allowances as may be prescribed.

7. (1) Subject to the provisions of sub-section (3), the Chairman or any other Governor shall only be removed from his office by order of the President of India on the ground of misbehaviour after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with such procedure as the Supreme Court may by rules provide, reported that the Chairman or other Governor, as the case may be, ought, on such ground, be removed.

Removal
and sus-
pension of
Chairman
and Gov-
ernors.

(2) The President may, after obtaining the approval of the Supreme Court, suspend from office the Chairman or other Governor in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may, by order, remove the Chairman or any other Whole-time Governor from his office if such Chairman or such other Whole-time Governor—

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind:

Provided that the President may, by order, remove any Part-time Governor from his office if he is adjudged an insolvent or where he is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind.

(4) If the Chairman or any other Whole-time Governor is, or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Corporation or the Government of India or the

Government of a State or, participates in any way in the profit thereof, or in any benefit or emolument arising therefrom than as a member, and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

(5) If a Part-time Governor is, or becomes in any way concerned, or interested in any contract or agreement made by or on behalf of the Corporation, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

(6) The Chairman or any other Governor may resign his office by giving notice thereof in writing to the President of India and on such resignation being accepted, the Chairman or other Governor shall be deemed to have vacated his office.

Meetings
of Board
of Gov-
ernors.

8. (1) The Board of Governors shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at meetings) as may be provided by regulations:

Provided that there shall not be less than six meetings every year but three months shall not intervene between one meeting and the next meeting.

(2) A Governor shall be deemed to have vacated his office if he absents himself for three consecutive meetings of the Board of Governors without the leave of the Chairman.

(3) The Chairman shall preside at the meetings of the Board of Governors and if for any reason he is unable to attend any meeting, the Executive Governor and in the absence of both, any other Governor elected by the Governors present at such meeting, shall preside at the meeting.

(4) All questions which come up before any meeting of the Board of Governors shall be decided by a majority of the votes of the Governors present and voting and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.

Officers
and
other
employees
of Cor-
poration.

9. (1) Subject to such control, restrictions and conditions as may be prescribed, the Corporation may appoint, after consulting with the Recruitment Board, such officers and other employees as may be necessary.

(2) The method of recruitment of such officers and employees and all other matters connected therewith and the conditions of service of such officers and other employees shall be such as may be provided by regulations.

Establish-
ment of
Recruit-
ment
Boards.

10. (1) The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards consisting wholly of persons other than the Governors, officers and other employees of the Corporation:

Provided that for the purposes of appointment to the posts carrying scales of pay corresponding to the scales of pay of Group 'A' posts in the Central Government. The Recruitment Board shall consist of the Chairman, other Governors and the Nominated Governor.

(2) The qualifications and other conditions of service of the members constituting the Recruitment Board and the period for which such members shall hold office, shall be such as may be prescribed.

11. (1) Where the Central Government has ceased to perform any functions which under section 12 are the functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order, to the Corporation any of the officers or other employees serving in the Akashvani or Doordarshan and engaged in the performance of those functions:

Transfer of service of existing employees to Corporation.

Provided that no order under this sub-section shall be made in relation to any officer or other employee in the Akashvani or Doordarshan who has, in respect of the proposal of the Central Government to transfer such officer or other employee to the Corporation, intimated within such time as may be specified in this behalf by the Central Government, his intention of not becoming an employee of the Corporation.

(2) The provisions of sub-section (1) shall also apply to the members of the Indian Information Service, the Central Secretariat Service or any other service or to persons borne on cadres outside Akashvani and Doordarshan who have been working in Akashvani or Doordarshan immediately before the appointed day:

Provided that where any such member intimates, within the time specified in sub-section (1), his intention of not becoming an employee of the Corporation but to continue on deputation, he may be allowed to continue on deputation in accordance with such terms and conditions as may be prescribed.

(3) In making an order under sub-section (1), the Central Government shall, as far as may be, take into consideration the functions which the Akashvani or, as the case may be, Doordarshan has ceased or ceases to perform and the area in which such functions have been or are performed.

(4) An officer or other employee transferred by an order under sub-section (1) shall, on and from the date of transfer, cease to be an employee of the Central Government and becomes an employee of the Corporation with such designation as the Corporation may determine and shall, subject to the provisions of sub-sections (5), (6) and (7), be governed by such regulations as may be made as respects remuneration and other conditions of service including pension, leave and provident fund and shall continue to be an officer or other employee of the Corporation unless and until his employment is terminated by the Corporation.

(5) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option, in writing, to be governed—

(a) by the scale of pay applicable to the post held by him in the Akashvani or Doordarshan immediately before the date of trans-

fer or by the scale applicable to the post under the Corporation to which he is transferred;

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules or orders of the Central Government, as amended from time to time, or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations.

and such option once exercised under this Act shall be final:

Provided that the option exercised under clause (a) by an officer or other employee shall be applicable only in respect of the post under the Corporation to which such officer or other employee is transferred and on appointment to a higher post under the Corporation he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or other employee is officiating in a higher post under the Government either in a leave vacancy or any other vacancy of a specified duration, his pay on transfer shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Union Ministry of Information and Broadcasting or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Ministry or office subsequent to the transfer to the Corporation of any other officer or employee senior to him in that Ministry or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

(6) No officer or other employee transferred by an order made under sub-section (1) or sub-section (2),—

(a) shall be dismissed or removed by an authority subordinate to that competent to make a similar or equivalent appointment under the Corporation as may be specified in the regulations;

(b) shall be dismissed, or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of evidence adduced during such inquiry and it shall not be necessary to give such person an opportunity of making representation on the proposed penalty:

Provided further that clause (b) shall not apply,—

(i) where an officer or other employee is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the authority empowered to dismiss or remove an officer or other employee or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.

(7) If, in respect of any officer or other employee referred to in sub-section (6), the question arises whether it is reasonably practicable to hold such inquiry as is referred to in that sub-section, the decision thereon of the authority empowered to dismiss or remove him or reduce him in rank, shall be final.

12. (1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

Functions
and powers
of Cor-
poration.

(2) The Corporation shall, in the discharge of its functions, be guided by the following objectives, namely:—

(a) upholding the unity and integrity of the country and the democratic and social values enshrined in the Constitution;

(b) safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international and presenting a fair and balanced flow of information including contrasting views, without advocating any opinion or ideology of its own;

(c) paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family, welfare and science and technology;

(d) providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;

(e) providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship;

(f) providing appropriate programmes keeping in view the special needs of the youth;

(g) informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women;

(h) promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society;

(i) safeguarding the rights of the working classes and advancing their welfare;

(j) serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas;

(k) providing suitable programmes keeping in view the special needs of the minorities and tribal communities;

(l) taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;

(m) promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State;

(n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;

(o) promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and

(p) expanding broadcasting facilities by establishing additional channels of transmission at various levels.

(3) In particular, and without prejudice to the generality of the foregoing provisions, the Corporation may take such steps as it thinks fit—

(a) to ensure that broadcasting is conducted as a public service to provide and produce programmes;

(b) to establish a system for the gathering of news for radio and television;

(c) to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services;

(d) to establish and maintain a library or libraries of radio, television and other materials;

(e) to conduct or commission, from time to time, programmes, audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the Corporation may think fit;

(f) to provide such other services as may be specified by regulations.

(4) Nothing in sub-sections (2) and (3) shall prevent the Corporation from managing on behalf of the Central Government the broadcasting of External Services and monitoring of broadcasts made by organisations outside India on the basis of arrangements made for reimbursement of expenses by the Central Government.

(5) The Corporation shall be subject to no civil liability on the ground merely that it failed to comply with any of the provisions of this section.

(6) The Corporation shall have power to determine and levy fees and other service charges for or in respect of the advertisements and such programmes as may be specified by regulations.

13. (1) There shall be established, by notification, as soon as may be after the appointed day, a Council, to be known as the Broadcasting Council, to receive and consider complaints referred to in section 14 and to advise the Corporation in the discharge of its functions in accordance with the objectives set out in section 12.

(2) The Broadcasting Council shall consist of a President and ten other members to be appointed by the President of India, in consultation with the Chairman, from amongst persons of eminence in public life.

(3) The President of the Broadcasting Council shall be a whole-time member and every other member shall be a part-time member and the President or the part-time member shall hold office as such for a term of three years from the date on which he enters upon his office.

(4) The Broadcasting Council may constitute such number of Regional Councils as it may deem necessary to aid and assist the Council in the discharge of its functions.

(5) The President of the Broadcasting Council shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salary and allowances and the conditions of service shall not be varied to the disadvantage of the President of the Broadcasting Council after his appointment.

(6) The other members of the Broadcasting Council and the members of the Regional Councils constituted under sub-section (4) shall be entitled to such allowances as may be prescribed.

14. (1) The Broadcasting Council shall receive and consider complaints from—

(i) any person or group of persons alleging that a certain programme or broadcast or the functioning of the Corporation in specific cases or in general is not in accordance with the objectives for which the Corporation is established;

(ii) any person (other than an officer or employee of the Corporation) claiming himself to have been treated unjustly or unfairly in any manner (including unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity) in connection with any programme broadcast by the Corporation.

(2) A complaint under sub-section (1) shall be made in such manner and within such period as may be specified by regulations.

(3) The Broadcasting Council shall follow such procedure as it thinks fit for the disposal of complaints received by it.

(4) If the complaint is found to be justified either wholly or in part, the Broadcasting Council shall advise the Executive Governor to take appropriate action.

Establishment of Broadcasting Council, term of office and removal, etc., of members thereof.

Jurisdiction of, and the procedure to be followed by, Broadcasting Council.

(5) If the Executive Governor is unable to accept the recommendation of the Broadcasting Council, he shall place such recommendation before the Board of Governors for its decision thereon.

(6) If the Board of Governors is also unable to accept the recommendation of the Broadcasting Council, it shall record its reasons therefor and inform the Broadcasting Council accordingly.

CHAPTER III

ASSETS, FINANCES AND ACCOUNTS

15. As from the appointed day,—

(a) all property and assets (including the Non-lapsable Fund) which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Central Government immediately before such day for or in connection with the purposes of Akashvani or Doordarshan or both shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Corporation;

(c) all sums of money due to the Central Government in relation to the Akashvani or Doordarshan or both immediately before such day shall be deemed to be due to the Corporation;

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Central Government immediately before such day for any matter in relation to the Akashvani or Doordarshan or both may be continued or instituted by or against the Corporation.

16. For the purposes of enabling the Corporation to discharge its functions efficiently under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Corporation in each financial year,—

(i) the proceeds of the broadcast receiver licence fees, if any, as reduced by the collection charges; and

(ii) such other sums of money as that Government considers necessary,

by way of equity, grant-in-aid or loan.

17. (1) The Corporation shall have its own Fund and all the receipts of the Corporation (including the amounts which stand transferred to the Corporation under section 15) shall be credited to the Fund and all payments by the Corporation shall be made therefrom.

(2) All moneys belonging to the Fund shall be deposited in one or more nationalised banks in such manner as the Corporation may decide.

(3) The Corporation may spend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the Fund of the Corporation.

Transfer of certain assets, liabilities, etc., of Central Government to Corporation.

Grants, etc., by Central Government.

Fund of Corporation.

5 of 1970.

40 of 1980.

Explanation.—For the purposes of this section, “nationalised bank” means a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

18. The Corporation may invest its moneys in the securities of the Central Government or any State Government or in such other manner as may be prescribed.

Investment of moneys.

19. (1) The Corporation shall, before the commencement of each year, prepare a statement of programme of its activities during the forthcoming year as well as financial estimates in respect thereof.

Budget of Corporation.

(2) The statement prepared under sub-section (1) shall, not less than three months before the commencement of each year, be submitted to the Central Government for its approval.

(3) The statement and the financial estimates of the Corporation referred to in sub-section (1) may, with the approval of the Central Government, be revised by the Corporation.

20. (1) The Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and in such manner as may be prescribed.

Accounts and audit of Corporation.

(2) The accounts of the Corporation shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Corporation to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and, in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Corporation.

(4) The accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

43 of 1961.

21. Notwithstanding anything contained in the Income-tax Act, 1961, or any other enactment for the time being in force relating to income-tax or any other tax on income, profits or gains, the Corporation shall not be liable to pay any income-tax or any other tax in respect of—

Corporation, not liable to be taxed.

(a) any income, profits or gains, accruing or arising out of the Fund of the Corporation or any amount received in that Fund; and

(b) any income, profits or gains, derived or any amount received by the Corporation.

CHAPTER IV

MISCELLANEOUS

Power of
Central
Govern-
ment
to give
direc-
tion.

22. (1) The Central Government may, from time to time as and when occasion arises, issue to the Corporation such directions as it may think necessary in the interest of the security of the State or preservation of public order requiring it not to make a broadcast on a matter specified in the direction or to make a broadcast on any matter of public importance specified in the direction.

(2) Where the Corporation makes a broadcast in pursuance of the direction issued under sub-section (1), the fact that such broadcast has been made in pursuance of such direction may also be announced along with such broadcast, if the Corporation so desires.

(3) A copy of every direction issued under sub-section (1) shall be laid before each House of Parliament.

Chair-
man,
Govern-
ors,
mem-
bers, etc.,
to be
public
servants:

23. The Chairman and every other Governor, every officer or other employee of the Corporation and every member of a committee thereof, the President and every member of the Broadcasting Council or every member of a Regional Council or a Recruitment Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

4

Protec-
tion of
action
taken in
good
faith.

24. No suit or other legal proceeding shall lie against the Corporation, the Chairman, any Governor or officer or other employee thereof or the President or a member of the Broadcasting Council or a member of a Regional Council or a Recruitment Board for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

Authen-
tication
of orders
and
other
instru-
ments of
Corpo-
ration.

25. All orders and decisions of the Corporation shall be authenticated by the signature of the Chairman or any other Governor authorised by the Corporation in this behalf and all other instruments executed by the Corporation shall be authenticated by the signature of the Executive Governor or by any officer of the Corporation authorised by him in this behalf.

Delega-
tion of
powers.

26. The Corporation may, by general or special order, delegate to the Chairman or any other Governor or to any officer of the Corporation, subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Act as it may deem fit.

Annual
report.

27. The Corporation shall prepare once in every calendar year in such form and within such time as may be prescribed, an annual report giving a full account of its activities (including the recommendations and suggestions made by the Broadcasting Council and the action taken thereon) during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

28. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power
to make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salaries and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the Chairman and the Whole-time Governors under sub-section (5) of section 6;

(b) the allowances payable to the Part-time Governors under sub-section (6) of section 6;

(c) the control, restrictions and conditions subject to which the Corporation may appoint officers and other employees under sub-section (1) of section 9;

(d) the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established under sub-section (1) of section 10;

(e) the qualifications and other conditions of service of the members of a Recruitment Board and their period of office under sub-section (2) of section 10;

(f) the terms and conditions in accordance with which the deputation may be regulated under sub-section (2) of section 11;

(g) the salary and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the President of the Broadcasting Council under sub-section (5) of section 13;

(h) the allowances payable to other members of the Broadcasting Council and the members of the Regional Councils, under sub-section (6) of section 13;

(i) the manner in which the Corporation may invest its moneys under section 18;

(j) the form and the manner in which the annual statement of accounts shall be prepared under sub-section (1) of section 20;

(k) the form in, and the time within, which the Corporation may prepare an annual report under section 27;

(l) any other matter which is required to be, or may be prescribed.

29. (1) The Corporation may, by notification, make regulations not inconsistent with this Act and the rules made thereunder for enabling it to perform its functions under this Act.

Power
to make
regu-
lations.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the manner in which and the purposes for which the Corporation may associate with itself any person under sub-section (7) of section 3;

(b) the times and places at which meetings of the Board of Governors shall be held and, the procedure to be followed thereat, and the quorum necessary for the transaction of the business at a meeting of the Board of Governors under sub-section (1) of section 8;

(c) the methods of recruitment and conditions of service of officers and other employees of the Corporation under sub-section (2) of section 9;

(d) the remuneration and other conditions of service, including pension, leave and provident fund in relation to an officer or other employee of the Corporation under sub-section (4) of section 11;

(e) the authority competent to make certain appointments referred to in clause (a) of sub-section (6) of section 11;

(f) the services which may be provided by the Corporation under clause (f) of sub-section (3) of section 12;

(g) the determination and levy of fees and other service charges in respect of advertisements and other programmes under sub-section (6) of section 12;

(h) the manner in which and the period within which complaints may be made under sub-section (2) of section 14;

(i) any other matter in respect of which provision is, in the opinion of the Corporation, necessary for the performance of its functions under this Act:

Provided that the regulations under clause (c) or clause (d) shall be made only with the prior approval of the Central Government.

Rules and regulations to be laid before Parliament.

30. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties.

31. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as it may deem necessary, for the removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

STATEMENT OF OBJECTS AND REASONS

It is the Government's declared policy to confer autonomy on Akashvani and Doordarshan thereby ensuring that they function in a fair, objective and creative manner. It is in this context that it is proposed to provide for the establishment of an autonomous Corporation to be known as Prasar Bharati (Broadcasting Corporation of India) and to entrust to it the functions which are at present discharged by Akashvani and Doordarshan. The intention is that the proposed Corporation should function as a genuinely autonomous body—innovative, dynamic and flexible—with a high degree of credibility. It must function in a democratic manner which enriches our democratic traditions and institutions, being responsible to the people and Parliament of India and keeping in mind the variegated traditions, languages and cultures of the country.

2. The Corporation is conceived of as a single unit with two distinct wings—Radio and Television respectively. The proposed structure takes into account the need for ensuring that Radio and Television, which belong to two distinct cultures, are enabled to evolve and grow in terms of their own genius while, at the same time, ensuring a commonality in overall approach which alone can ensure that the requirements of the people in terms of entertainment, information and education are met.

3. The Corporation will have a Board of Governors comprising a Chairman, an Executive Governor, a Governor who would be responsible for finance and a Governor incharge of personnel matters. Besides, these full-time functionaries, the Board will also have six part-time Governors—people of eminence drawn from diverse walks of life. The Governors will be appointed by the President of India on the recommendations of a Committee headed by the Chairman of the Rajya Sabha and consisting of the Chairman of the Press Council of India and a nominee of the President of India.

4. The Corporation will, while discharging its functions, be guided by specified objectives, with emphasis on upholding the unity and integrity of the country, nurturing the democratic and social values enshrined in the Constitution and projecting the varied cultural traditions of different regions of the country.

5. The Executive Governor shall be the Chief Executive of the Corporation, responsible for its day-to-day administration.

6. The Bill also provides for the establishment of a Broadcasting Council, consisting of a President and ten other Members appointed by the President of India. This Council will ensure that the citizen's right to be informed freely, truthfully and objectively is fully protected and that the Corporation does not stray from the objective of ensuring adequate coverage to the country's diverse culture, and of catering to the various sections of society. This Council will consider complaints about programmes broadcast by the Corporation in this context and render suitable advice to the Board of Governors.

7. In addition to making provisions regarding establishment and composition of the Corporation, appointment and removal of the Governors of the Corporation, the Bill also provides for transfer of properties and funds at present vested in the Central Government for the purpose of Akashvani and Doordarshan to the Corporation, transfer of employees of Akashvani and Doordarshan to the Corporation and other ancillary matters and the establishment of Recruitment Boards for recommending the appointment of officers and other employees of the Corporation.

8. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 26th December, 1989.

P. UPENDRA.

Notes on Clauses

Clause 2 seeks to define certain expressions used in the Bill.

Clause 3 provides for the establishment of the Broadcasting Corporation to be known as 'Prasar Bharati' and for its composition.

Clauses 4 to 6 provide for the appointment of the Chairman and the Board of Governors, powers and functions of the Chairman and the Executive Governor and also the term of office and conditions of service of the Chairman and other Governors.

Clause 7 deals with the removal and suspension of Chairman and other Governors. The grounds of removal as provided in the clause are the same as those provided in article 317 of the Constitution with respect to removal of the Chairman or other members of a Public Service Commission. The Chairman and other Governors may be removed from office by an order of the President on the ground of misbehaviour after the Supreme Court on a reference made to it by the President has on inquiry held in accordance with such procedure as the Supreme Court may by rules provide, reported that the Chairman or other Governor ought, on any such ground to be removed. The President may suspend from office the Chairman or other Governor where a reference has been made to the Supreme Court for inquiry as to whether he should be removed on the ground of misbehaviour. The President cannot exercise the power to suspend the Chairman or other Governor without obtaining the prior approval of the Supreme Court. The President may remove the Chairman or any Whole-time Governor from office if he is adjudged as an insolvent or engages during his term of office in any paid employment outside the duties of his office or if he is, in the opinion of the President unfit to continue in office by reason of infirmity of body or mind. As in the case of a member of Public Service Commission, the ground of misbehaviour includes a case in which the Chairman or a Whole-time Governor is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Corporation or the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company. A Part-time Governor will also incur similar disqualification if he is or becomes interested in any contract or agreement with the Corporation.

Clause 8 deals with the meetings of the Board of Governors.

Clause 9 empowers the Corporation to appoint, in consultation with the Recruitment Board, such officers and other employees as may be necessary.

Clause 10 provides for the establishment of one or more Recruitment Boards for the purpose of selection of candidates to the posts of officers and other employees under the Corporation.

Clause 11 deals with the transfer of service of the existing employees of the Akashvani and Doordarshan to the Corporation by order of the Central Government. It also provides that no such order shall be made in relation to any officer or other employee if he has intimated the Central Government, within the time specified, his intention of not becoming an employee of the Corporation.

Clause 12 enumerates the functions of the Corporation. Sub-clause (1) provides that it shall be the primary duty of the Corporation to organise and conduct public broadcasting services, to inform, educate and entertain the public and to ensure a balanced development of radio and television. Sub-clause (2) of this clause enumerates the various objectives by which the Corporation shall be guided in the discharge of its functions.

Clauses 13 and 14.—*Clause 13* provides for the establishment by the Corporation of a Broadcasting Council consisting of a President and ten other members. *Clause 14* empowers the Broadcasting Council to receive and consider complaints from any person or group of persons alleging that a programme broadcast by the Corporation or the functioning of the Corporation generally or in a specific instance is not in accordance with the objectives for which the Corporation is established and also from any person claiming himself to have been treated unjustly or unfairly in any manner in connection with any programme broadcast by the Corporation or unjustly or unfairly treated in any manner in connection with any programme by the corporation. The clause also empowers the Broadcasting Council to follow such procedure as it thinks fit for disposal of complaints.

Clause 15 deals with the transfer of certain assets and liabilities, etc., held for the purposes of Akashvani and Doordarshan to the Corporation.

Clause 16 provides for the payment by the Central Government, after due appropriation made by Parliament by law, to the Corporation, in each financial year, the proceeds of the broadcast receiver licence fees, if any, after deducting the collection charges, and such other sums of money as the Government considers necessary by way of equity, grant-in-aid or loan.

Clause 17 provides for the Fund of the Corporation.

Clause 18 relates to the investment of the moneys of the Corporation.

Clause 19 lays down that the Corporation may prepare a statement of programme of activities during the forthcoming year as well as financial estimates in respect thereof before the commencement of each year.

Clause 20 lays down that the Corporation shall maintain proper accounts and other relevant records and prepare an Annual Statement of Accounts which shall be audited by the Comptroller and Auditor-General of India.

Clause 21 seeks to exempt the Corporation from the payment of income tax or any other tax in respect of any income, profits or gains, derived by the Corporation.

Clause 22 empowers the Central Government to issue such directions as it may think necessary, in the interest of security of the State or preservation of public order, requiring it not to make a broadcast or, on any matter of public importance, specified in the direction. A copy of each such direction shall be laid before each House of Parliament.

Clause 23 provides for the Chairman, Governors and officers or other employees of the Corporation, etc., and every member of its committees, the President and every member of the Broadcasting Council or a Regional Council, thereof or a member of a Recruitment Board to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 24 seeks to give protection for anything which is in good faith done or intended to be done in pursuance of the Act or any rules and regulations made thereunder by the persons referred to in section 23.

Clause 25 provides for the authentication of orders and decisions of the Corporation by the signature of the Chairman or other Governor authorised by the Corporation in this behalf and all other instruments by the signature of the Executive Governor or by any other officer of the Corporation authorised by him.

Clause 26 provides for the delegation, by general or special order, of the powers of the Corporation to the Chairman or any other Governor or to any officer of the Corporation subject to such conditions and limitations, if any, as may be specified in the order.

Clause 27 provides for the preparation by the Corporation of an annual report giving a full account of its activities during the previous year. The Central Government has to cause the same to be laid before each House of Parliament.

Clause 28 empowers the Central Government to make rules for carrying out the provisions of the Act.

Clause 29 empowers the Corporation to make regulations not inconsistent with the Act and the rules made thereunder for enabling it to discharge its functions under the Act.

Clause 30 provides for laying of the rules and regulations made under the Act before Parliament.

Clause 31 provides for removal of difficulties in giving effect to the provisions of the Act.

FINANCIAL MEMORANDUM

According to sub-clause (5) of clause 3 of the Bill, the Board of Governors of the Corporation shall consist of one Whole-time Chairman, one Whole-time Executive Governor, two other Whole-time Governors, six Part-time Governors and one Nominated Governor. According to sub-clause (5) of clause 6 of the Bill, the Chairman, the Executive Governor and the other two full-time Governors shall be entitled to such salaries and allowances as may be prescribed. According to clause 10 of the Bill, the Corporation would have one or more boards to be known as the Recruitment Board or Boards. The conditions of service of the Members of the Recruitment Boards would be as may be prescribed. According to clause 13 of the Bill, there will be a Broadcasting Council to receive complaints. The Council shall consist of a President who shall be a whole-time member and ten other part-time members. Expenditure on the Board of Governors of the Corporation, the Broadcasting Council and the Recruitment Boards is estimated to be about Rs. 1.0 crore per annum recurring and Rs. 40 lakhs non-recurring.

2. According to clause 15 of the Bill, all properties and assets, including the Non-lapsable Fund, are to be transferred to the proposed Corporation along with all debts, obligations and liabilities. The total value of the assets of Akashvani and Doordarshan have not yet been assessed and, therefore, cannot be indicated. The estimated balance in the Non-lapsable Fund on 1-4-1990 is estimated to be Rs. 111 crores.

3. Clause 16 of the Bill provides for payment by the Government to the proposed Corporation of the proceeds of Broadcast Receiver Licence Fee, if any, as reduced by collection charges and such other sums of money as the Government considers necessary by way of equity, grant-in-aid or loan.

4. Broadcast Receiver Licences have been discontinued from 1985-86. So, at present, there is no income from Broadcast Receiver Licences which can be paid to the proposed Corporation. The main receipt of the Corporation will be the income from commercial advertisement which is about Rs. 230 crores (gross) in 1989-90.

5. At 1989-90 level of expenditure on Akashvani and Doordarshan the Central Government is funding them to the extent of Rs. 55.28 crores on Non Plan Account (net, after taking into account receipts and recoveries of Rs. 313.17 crores) and Rs. 408.01 crores on Plan Account (net).

6. The Corporation will, over a period of time, strive to reduce its dependence on Government budgetary support.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 28 of the Bill seeks to empower the Central Government to make rules for carrying out the provisions of the Act. The matters in respect of which such rules may be made relate *inter alia* to the salary and allowances and conditions of service and other matters in relation to the Chairman and the Whole-time Governors, the allowances payable to the Part-time Governors the control, restrictions and conditions subject to which the Corporation may appoint officers and other employees, the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established, the qualifications and other conditions of service of the members of such a Board, the salary, allowances, etc., of the President of the Broadcasting Council, the manner of investment of the Corporation's money, etc.

2. Clause 29 of the Bill seeks to empower the Corporation to make regulations not inconsistent with the Act and the rules thereunder for enabling it to perform its functions under the Act. The matters in respect of which such regulations may be made relate *inter alia* to the manner in which and the purposes for which the Corporation may associate with itself any person in complying with any of the provisions of the Act, to the time and place at which meetings of the Board of Governors shall be held and the procedure to be followed thereat, and the quorum necessary at such meetings, the recruitment and conditions of service of officers and other employees of the Corporation.

3. The matters in respect of which rules may be made under clause 28 of the Bill and the matters in respect of which regulations may be made under clause 29 of the Bill are all matters of detail or procedure or matters for which it is not practicable to make provision in the Act. Further, as provided in clause 30 of the Bill, the rules and regulations have to be laid before Parliament. Hence the delegation of legislative power is of a normal character.

BILL No. 98 OF 1989

A Bill to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against public functionaries and for matters connected therewith.

BE it enacted by Parliament in the Fortieth Year of the Republic of India as follows:—

PRELIMINARY

Short
title,
and com-
mence-
ment,

1. (1) This Act may be called the Lokpal Act, 1989.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) “chairman” means the Chairman of the Lokpal;

(b) “competent authority”, in relation to—

(i) the Prime Minister, means the House of the People;

(ii) a public functionary, other than the Prime Minister, means the Prime Minister;

(c) “complaint” means a complaint alleging that a public functionary has committed any offence punishable under the Prevention of Corruption Act, 1988;

- (d) "Lokpal" means the institution established under section 3;
- (e) "Member" means a Member of the Lokpal and includes the Chairman of the Lokpal;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "public functionary" means a person who holds, or has held, the office of the Prime Minister, Deputy Prime Minister, Minister, Minister of State or Deputy Minister, of the Union.

MACHINERY FOR INQUIRIES

3. (1) As from the commencement of this Act, there shall be established, for the purpose of making inquiries in respect of complaints under this Act, an institution to be called the "Lokpal".

Estab-
lishment
of Lok-
pal.

(2) The Lokpal shall consist of a Chairman and two other Members.

(3) The President shall, after consultation with the Chief Justice of India, appoint by warrant under his hand and seal, persons who are or have been Judges of the Supreme Court as the Chairman and Members of the Lokpal.

(4) Every Member shall, before entering upon his office, make and subscribe before the President, or a person appointed in that behalf by the President, an oath or affirmation in the form set out in the Schedule.

4. A Member shall not be a Member of Parliament or a Member of the Legislature of any State and shall not, hold any office of trust or profit (other than his office as Member), or be connected with any political party, or carry on any business, or practise any profession, and accordingly, before he enters upon his office, a Member shall,—

Members
to be
ineligible
to hold
other
offices.

(a) if he is a Member of Parliament or of the Legislature of any State, resign such membership; or

(b) if he holds any office of trust or profit, resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, cease to practise such profession.

5. (1) Every Member shall hold office for a term of five years from the date on which he enters upon his office:

Term of
office and
other con-
ditions
of service
of Mem-
bers.

Provided that he may—

(a) by writing under his hand addressed to the President, resign his office;

(b) be removed from his office in the manner provided in section 6.

(2) On ceasing to hold office, a Member shall be ineligible for further employment to any office of profit under the Government of India or the Government of a State.

(3) The salary, allowances and other conditions of service of—

(i) the Chairman shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of the Judge of the Supreme Court:

Provided that if a Member is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as a Member be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, a Member shall not be varied to his disadvantage after his appointment.

Removal
of a
Member.

6. (1) A Member shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the Members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Member under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and, accordingly the provisions of that Act shall, subject to necessary modifications, apply in relation to the removal of a Member as they apply in relation to the removal of a Judge.

51 of 1968.

Staff of
Lokpal.

7. (1) The Lokpal shall, for the purpose of assisting it in the discharge of its functions (including verification and inquiries in respect of complaints) under this Act, appoint a Secretary and such other officers and employees as the President may, in consultation with the Lokpal, determine from time to time.

(2) Without prejudice to the provisions of sub-section (1), the Lokpal may, for the purpose of dealing with any complaints or any classes of complaints, secure—

(i) the services of any officer or employee or investigating agency of the Central Government or a State Government with the concurrence of that Government; or

(ii) the services of any other person or agency.

(8) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear in the discharge of their functions) shall be such as the President may, in consultation with the Lokpal, determine from time to time.

(4) In the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall be subject to the exclusive administrative control and direction of the Lokpal.

JURISDICTION AND PROCEDURE IN RESPECT OF INQUIRIES

8. (1) Subject to the other provisions of this Act, the Lokpal may inquire into any matter involved in, or arising from, or connected with, any allegation made in a complaint.

Jurisdic-
tion of
Lokpal,

(2) The Lokpal may inquire into any act or conduct of any person other than a public functionary in so far as it considers it necessary, so to do for the purpose of its inquiry into any such allegation:

Provided that the Lokpal shall give such person a reasonable opportunity of being heard and to produce evidence in his defence.

(3) No matter in respect of which a complaint may be made under this Act shall be referred for inquiry under the Commissions of Inquiry Act, 1952, except on the recommendation, or with the concurrence, of the Lokpal.

60 of 1952.

9. (1) The Lokpal shall not inquire into any matter concerning any person if any Member has any bias in respect of such matter or person and if any dispute arises in this behalf, the President shall, on an application made by the party aggrieved, obtain, in such manner as may be prescribed, the opinion of the Chief Justice of India and decide the dispute in conformity with such opinion.

Matters
not sub-
ject to
jurisdic-
tion of
Lokpal.

(2) The Lokpal shall not inquire into any matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, on its recommendation or with its prior concurrence.

60 of 1952.

(3) The Lokpal shall not inquire into any complaint if the complaint is made after the expiry of five years from the date on which the offence mentioned in such complaint is alleged to have been committed.

10. (1) Any person other than a public servant may make a complaint under this Act to the Lokpal.

Com-
plaints.

Explanation.—For the purpose of this sub-section, “public servant” means—

(a) any person who is a member of a Defence service or of a civil service of the Union or a State or of an all-India service or holds any post connected with Defence or any civil post under the Union or a State;

(b) any person in the service or pay of a local authority, a corporation established by or under a Central Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956.

1 of 1956.

(2) The complaint shall be in the prescribed form and shall set forth particulars of the offence alleged and shall be accompanied by an affidavit in support of such particulars and a certificate in the prescribed form in respect of the deposit under sub-section (3) or, if the complainant is unable to make the deposit, an application for exemption from the requirement as to such deposit.

(3) The complainant shall deposit in such manner and with such authority or agency as may be prescribed a sum of one thousand rupees to be available for disposal under section 26:

Provided that the Lokpal may, for sufficient cause to be recorded in writing, exempt a complainant from the requirement under this sub-section.

(4) Notwithstanding anything contained in the foregoing sub-sections, any letter written to the Lokpal or, as the case may be, the appropriate authority by a person in any jail or other place of custody or in any asylum or other place for insane persons may, if the Lokpal or, as the case may be, the appropriate authority is satisfied that it is necessary so to do, be treated as a complaint made in accordance with the provisions of this section.

(5) Notwithstanding anything contained in any other enactment, it shall be the duty of a police officer or other person in charge of any jail or other place of custody or of any asylum or other place for insane persons to forward, without opening, any letter addressed to the Lokpal or the appropriate authority by a person imprisoned or detained in such jail, place of custody, asylum or other place, to the Lokpal or the appropriate authority without delay.

Explanation.—For the purposes of this section, “appropriate authority” means any of the authorities which the Lokpal may, by general or special order, in writing, determine to be the appropriate authority.

Preliminary
scrutiny
of complaints
by
Lokpal.

11. (1) If the Lokpal is satisfied, after considering a complaint and after making such verification as it deems appropriate,—

(a) that the complaint is not made within the period of five years specified in sub-section (3) of section 9; or

(b) that it cannot make an inquiry in respect of the complaint by reason of the provisions of sub-section (1) or sub-section (2) of section 9 or any other provision of this Act; or

(c) that the complaint is frivolous or vexatious or is not made in good faith; or

(d) that there are no sufficient grounds for inquiring into the complaint,

the Lokpal shall dismiss the complaint after recording its reasons therefor and communicate the same to the complainant and to the competent authority.

(2) The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Lokpal deems appropriate in the circumstances of the case and in particular, the Lokpal may, if it deems

it necessary so to do, call for the comments of the public functionary concerned.

12. (1) If, after the consideration and verification under section 11, in respect of a complaint, the Lokpal proposes to conduct any inquiry, it—

Procedure
in respect
of in-
quiries.

(a) may make such orders as to the safe custody of documents relevant to the inquiry as it deems fit;

(b) shall, at such time as it considers appropriate, forward a copy of the complaint to the public functionary concerned and afford him an opportunity to represent his case.

(2) Every such inquiry shall be conducted *in camera* by the Chairman and the Members sitting jointly.

(3) Save as aforesaid, the procedure for conducting any such inquiry shall be such as the Lokpal considers appropriate in the circumstances of the case.

13. (1) Where the Lokpal is satisfied—

Power of
Lokpal to
issue, in
certain
circum-
stances,
direc-
tions for
deferring
or sus-
pending
investi-
gation
into an
offence.

(a) that investigation by any police officer under the Code of Criminal Procedure, 1973, into any offence in respect of which a complaint is made or into any matters connected therewith may prejudicially affect the conduct of inquiry under this Act with respect to such complaint; and

(b) that having regard to all the circumstances of the case it would be proper to defer such investigation pending the completion of such inquiry,

2 of 1974.

it may, by order in writing and for reasons to be recorded therein, direct that till the completion of such inquiry or for such shorter period as may be specified in the order, any such investigation shall be deferred or, as the case may be, shall be suspended:

Provided that no such direction shall apply with respect to any investigation required to be made in pursuance of an order of any court.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in computing, for the purposes of Chapter XXXVI of that Code, the period of limitation for taking cognizance of any offence, being an offence the investigation in respect of which has been deferred or suspended by reason of an order under sub-section (1), the date on which such order was made, the period during which the investigation remained deferred or, as the case may be, suspended by reason of the order and the date on which the order ceased to have effect, shall be excluded.

14. (1) Subject to the provisions of this section, for the purpose of any inquiry (including the verification under section 11), the Lokpal—

Evidence.

(a) may require any public servant or any other person who, in its opinion is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce such document;

(b) shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

- (i) summoning and enforcing the attendance of any person and examining him on oath;
- (ii) requiring the discovery and production of any document;
- (iii) receiving evidence on affidavits;
- (iv) requisitioning any public record or copy thereof from any court or office;
- (v) issuing commissions for the examination of witnesses or documents; and
- (vi) such other matters as may be prescribed.

(2) A proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code. 45 of 1860.

(3) Subject to the provisions of sub-section (4),—

(a) no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any provision of law whatever shall apply to the disclosure of information for the purposes of any inquiry (including the verification under section 11) under this Act; and

(b) the Government or any public servant shall not be entitled, in relation to any such verification or inquiry, to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any provision of law whatever in legal proceedings.

(4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document—

(a) as might prejudice the security, or defence, or international relations, of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime; or

(b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or of any Committee of such Cabinet,

and for the purpose of this sub-section, a certificate issued by a Secretary to the Government of India certifying that any information or answer or portion of a document, is of the nature specified in clause (a) or clause (b) shall be binding and conclusive:

Provided that the Lokpal may require any information or answer or portion of a document in respect of which a certificate is issued under this sub-section to the effect that it is of the nature specified in clause (a) to be disclosed to it in private for scrutiny and if on such scrutiny the Lokpal is satisfied that such certificate ought not to have been issued, it shall declare the certificate to be of no effect.

45 of 1860.

Explanation.—For the purposes of this section “public servant” has the same meaning as in section 21 of the Indian Penal Code.

15. (1) If the Lokpal has reason to believe that any documents which, in its opinion, will be useful for, or relevant to, any inquiry under this Act, are secreted in any place, it may authorise any officer subordinate to it, or any officer of an investigating agency referred to in sub-section (2) of section 7, to search for and to seize such documents.

Search
and
seizure.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any inquiry under this Act and that it would be necessary to retain the document in its custody, it may so retain the said document till the completion of such inquiry:

Provided that where such document is seized before the commencement of such inquiry, the Lokpal shall return the document before the expiration of a period of one year from the date on which it is seized unless such inquiry has been commenced before such expiration.

Explanation.—For the purpose of this sub-section, an inquiry in respect of a complaint—

(a) shall be deemed to have commenced on the date on which it is made to the Lokpal under section 10;

(b) shall be deemed to have been completed on the date on which the Lokpal closes the case under clause (a) of sub-section (1) of section 16 or where the Lokpal makes a report to the competent authority under clause (b) of that sub-section, on the expiry of the period mentioned in sub-section (4) of that section.

2 of 1974.

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if, for the word “Magistrate”, wherever it occurs, the words “Lokpal or any officer authorised by it” were substituted.

16. (1) If, after inquiry in respect of a complaint, the Lokpal is satisfied—

Reports.

(a) that no allegation made in the complaint has been substantiated either wholly or partly, it shall close the case and intimate the complainant, the public functionary and the competent authority accordingly;

(b) that all or any of the allegations made in the complaint have or has been substantiated either wholly or partly, it shall, by report in writing, communicate its findings and recommendations to the competent authority and intimate the complainant and the public functionary about its having made the report.

(2) The competent authority in the case of a public functionary, other than the Prime Minister, shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

(3) The Speaker, in the case of the Prime Minister, shall, as soon as may be after and in any case not later than ninety days from the

receipt of report under clause (b) of sub-section (1), cause the same to be laid before the House of the People.

Explanation.—In computing the period of ninety days referred to in this sub-section, any period during which the House of the People is not in session shall be excluded.

(4) The Lokpal shall present annually to the President a consolidated report on the administration of this Act and the President shall, as soon as may be after, and in any case not later than ninety days from the receipt of such report, cause the same, together with the explanatory memorandum, to be laid before each House of Parliament.

Explanation.—In computing the period of ninety days referred to in this sub-section, any period during which Parliament or, as the case may be, either House of Parliament, is not in session, shall be excluded.

MISCELLANEOUS

Expendi-
ture on
Members.
to be
charged
on the
Consoli-
dated
Fund of
India.

17. The salaries, allowances and pensions payable to, or in respect of, the Members, shall be expenditure charged on the Consolidated Fund of India.

Secrecy
of infor-
mation.

18. (1) Any information obtained by the Lokpal, or by any officer, employee, agency, or person referred to in section 7, in the course of, or for the purposes of, any verification or inquiry under this Act, and any evidence recorded or collected in connection therewith shall be treated as confidential and, notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall be entitled to compel the Lokpal, or any such officer, employee, agency or person, to give evidence relating to such information or to produce the evidence so recorded or collected.

1 of 1872.

(2) Nothing in sub-section (1) shall apply to the disclosure of the information or evidence referred to therein—

(a) for the purposes of this Act or for the purposes of any action or proceedings to be taken on any report under section 16; or

(b) for the purposes of any proceedings, for an offence of giving or fabricating false evidence, under the Indian Penal Code; or

45 of 1860.

(c) for such other purposes as may be prescribed.

Inten-
tional
insult, or
interrup-
tion to,
or bring-
ing into
disre-
pute,
Lokpal.

19. (1) Whoever intentionally offers any insult, or causes any interruption, to the Lokpal while the Lokpal or any of its Members, is making any verification or conducting any inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement, or does any other act, which is calculated to bring the Lokpal into disrepute, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

2 of 1974.

(3) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Lokpal.

2 of 1974.

20. (1) If, at any stage of a proceeding before the Lokpal, it appears to the Lokpal that any person appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, the Lokpal may, if satisfied that it is necessary and expedient in the interests of justice that the person should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973, and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

Power of Lokpal to try certain offences summarily.

45 of 1860.

(2) When any such offence as is described in section 175, section 178, section 179 or section 180 of the Indian Penal Code is committed in the view or presence of the Lokpal, the Lokpal may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, try such offender summarily so far as may be in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973 and sentence him to simple imprisonment for term which may extend to one month, or to fine which may extend to five hundred rupees, or to both.

2 of 1974.

(3) In every case tried under this section, the Lokpal shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

(4) Any person convicted on a trial held under this section may appeal to the Supreme Court.

2 of 1974.

(5) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

21. (1) If any person prints or publishes any information with respect to any complaint under this Act (including the identity of the person making the complaint, the public functionary against whom the complaint has been made and the particulars contained in the complaint) or with respect to any proceeding, act or thing taken or done or purported to have been taken or done under this Act in relation to such complaint—

Disclosure of information and publication of false information in respect of complaints and proceedings under this Act.

(a) where the Lokpal dismisses such complaint under section 11, at any time before such dismissal; or

(b) where the Lokpal closes the case with respect to such complaint under clause (a) of sub-section (1) of section 16, at any time before such closure; or

(c) where the Lokpal forwards to the competent authority a report of his findings and recommendations with respect to such complaint under clause (b) of sub-section (1) of section 16, at any time before the expiry of three months from the date of receipt of the report by the competent authority or, as the case may be, at any time before the report is laid before the House of the People under sub-section (3) of section 16,

such person shall be guilty of an offence under this sub-section.

(2) If any person prints or publishes any information alleging or suggesting that a complaint has been made under this Act against any public functionary and such information is false, such person shall be guilty of an offence under this sub-section.

(3) When any offence under sub-section (1) or sub-section (2) is committed, the Lokpal may take cognizance of the offence and, after giving the offender reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily so far as may be in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973 and sentence him to imprisonment for a term which may extend to six months, or to fine which may extend to ten thousand rupees, or to both.

(4) In every case tried under this section, the Lokpal shall record the facts constituting the offence with the statement (if any) made by the offender as well as the findings and the sentence.

(5) Any person convicted on a trial under this section may appeal to the Supreme Court.

(6) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

2 of 1974.

Action
in case
of false
com-
plaints.

22. (1) Every person who fulfully or maliciously makes any complaint which he knows or has reason to believe to be false under this Act shall be punished with imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to three thousand rupees.

(2) No court, except a Court of Session, shall take cognizance of an offence under sub-section (1).

(3) No Court of Session shall take cognizance of an offence under sub-section (1) except on a complaint in writing made by the Public Prosecutor at the direction of the Lokpal and the Court of Session may take cognizance of the offence on such complaint without the case being committed to it.

(4) The Court of Session, on conviction of the person making false complaint, may award, out of the amount of fine, to the public functionary against whom such false complaint has been made, such amount of compensation as it thinks fit.

(5) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973.

2 of 1974.

23. Notwithstanding anything contained in any other law for the time being in force, where on an inquiry in respect of a complaint against a public functionary the Lokpal has held that any allegations made in the complaint have not been proved or substantiated, no prosecution shall lie on any complaint, report, information or otherwise and no court shall take cognizance of any offence on the basis of the same or substantially the same allegations as in the complaint.

Bar of prosecution on allegations not proved or not substantiated.

24. Subject to the other provisions of this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to proceedings before a Lokpal under sections 20 and 21 and for the purposes of the said provisions of that Code and the said proceedings the Lokpal shall be deemed to be a Court of Session and shall have all the powers of a Court of Session.

Application of Act 2 of 1974.

25. (1) The President may, by order in writing and subject to such conditions or limitations as may be specified in the order, require the Lokpal to inquire into any allegation (being an allegation in respect of which a complaint may be made) specified in the order in respect of a public functionary and, notwithstanding anything contained in this Act, the Lokpal shall comply with such order

Conferment of additional functions on Lokpal.

(2) When the Lokpal is to make any inquiry under sub-section (1), the Lokpal shall exercise the same powers and discharge the same functions as it would in the case of any inquiry made on a complaint under this Act and the provisions of this Act (except section 22) shall apply accordingly.

26. The sum deposited by a complainant under section 10 shall,—

Disposal of deposit.

(a) in a case where the complaint is dismissed under clause (c) of sub-section (1) of section 11, stand forfeited to the Central Government;

(b) if the Lokpal, for reasons to be recorded in writing so directs, be utilised for compensating the public functionary complained against; and

(c) in any other case, be refunded to the complainant.

27. If the Lokpal is satisfied—

(a) that all or any of the allegations made in a complaint have or has been substantiated either wholly or partly; and

(b) that having regard to the expenses incurred by the complainant in relation to the proceedings in respect of such complaint and all other relevant circumstances of the case the complainant deserves to be compensated or rewarded,

Compensation or reward, or both, payable in certain cases to complainant.

the Lokpal shall determine the amount which shall be paid to the complainant by way of such compensation or reward and the Central Government shall pay the amount or amounts so determined to the complainant.

28. (1) No suit, prosecution, or other legal proceedings shall lie against the Lokpal or any Member or against any officer, employee, agency or person referred to in section 7, in respect of anything which is in good faith done, or intended to be done, under this Act.

Protection of action taken in good faith.

(2) Save as otherwise provided in this Act, no proceedings or decision of the Lokpal shall be liable to be challenged, reviewed, quashed or called in question, in any court.

Power to
delegate.

29. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any powers conferred or duties imposed on it by or under this Act [except the powers under the proviso to sub-section (3) of section 10, the power to dismiss a complaint under sub-section (1) of section 11, the powers to close cases and make reports under section 16 and the powers under sections 20, 21 and 22] may also be exercised or discharged by such of the officers, employees or agencies referred to in sub-section (1) or sub-section (2) of section 7, as may be specified in the order.

Power to
make
rules.

30. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for—

(a) the manner in which the President shall obtain the opinion of the Chief Justice of India under sub-section (1) of section 9;

(b) the form in which complaints may be made under section 10 and the fees, if any, which may be charged in respect thereof;

(c) the manner in which and the authorities or agencies with whom deposit shall be made under sub-section (3) of section 10 and the form in which certificates shall be furnished in respect of deposit under sub-section (3) of section 10;

(d) the matters referred to in sub-clause (vi) of clause (b) of sub-section (1) of section 14;

(e) the purposes referred to in clause (c) of sub-section (2) of section 18;

(f) any other matter which is to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Removal
of doubts.

31. For the removal of doubts, it is hereby declared that nothing in this Act shall operate to confer or enable the conferring of any jurisdiction on the Lokpal to make any inquiry into any allegation against or any act or conduct of,—

(a) the President, the Vice-President or the Speaker of the House of the People;

(b) the Chief Justice or any other Judge of the Supreme Court of India;

(c) the Comptroller and Auditor-General of India, the Chief Election Commissioner or other Election Commissioner (if any) or the Chairman or any other Member of the Union Public Service Commission.

60 of 1952.

Conse-
quential
amend-
ment of
Act 60 of
1952.

32. Nothing contained in this Act shall be construed as affecting the constitution of, or the continuance of functioning or exercise of powers by, any Commission of Inquiry appointed under the Commissions of Inquiry Act 1952, before the commencement of this Act and no complaint shall be made under this Act in respect of any matter referred for inquiry to such Commission before such commencement.

Savings.

33. In section 3 of the Commissions of Inquiry Act, 1952, in sub-section (1), for the words "The appropriate Government may", the words, brackets and figures "Subject to the provisions of sub-section (3) of section 8 of the Lokpal Act, 1989, the appropriate Government may" shall be substituted.

THE SCHEDULE

I, _____ having been appointed Chairman/Member of the Lokpal, do swear in the name of God that I will bear true faith and allegiance _____ solemnly affirm

to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will.

STATEMENT OF OBJECTS AND REASONS

The Lokpal Bill has had a chequered history going back to 1968. Having studied the interim report of the Administrative Reforms Commission submitted in 1966 on the subject and all the four Bills¹ which were introduced in the Parliament earlier, the Government has come to the conclusion that such legislation for constituting the institution of Lokpal is imperative to combat the problem of corruption at higher political levels. In the interest of democracy, it should be the endeavour of every public functionary at top political levels to maintain high standard of public morality, Hence this Bill.

2. The present Bill seeks to set up the institution of Lokpal consisting of Chairman and two Members. Only persons who are or have been Judges of the Supreme Court would be eligible for appointment to this Body. This has been proposed to create a greater assurance of justice and fair play in the minds of all. It is proposed that jurisdiction of Lokpal should cover the complaint of corruption within the meaning of the Prevention of Corruption Act, 1988 against the Council of Ministers including the Prime Minister. It is also provided that in case of complaints against a Minister, the competent authority should be the Prime Minister to decide about the action on the recommendation of the Lokpal and in the case of the Prime Minister, it is left to the House of the People as ultimately that political functionary is responsible to the people through their representatives. To enable the persons constituting the Lokpal to perform their functions with highest objectivity and to ensure their independence it is also provided that their salary, other conditions of service including removal from office shall be those of the Chief Justice of India in the case of the Chairman and Judges of the Supreme Court in the case of other Members.

3. The Notes on clauses explain the various provisions of the Bill.

NEW DELHI;

DINESH GOSWAMI.

The 21st December, 1989.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter dated 22nd December, 1989 from Shri Dinesh Goswami, Minister of Law and Justice to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the Bill to provide for the appointment of a Lokpal to enquire into allegations of corruption against public functionaries and for matters connected therewith, recommends under clauses (1) and (3) of article 117 of the Constitution of India, the introduction and consideration of the Bill in Lok Sabha.

Notes on Clauses

Clause 2 defines the various expressions used in the Bill.

Clause 3 provides for the establishment of an institution to be known as Lokpal which will consist of Chairman and two other Members. The Chairman and other Members will be serving or retired Judge of the Supreme Court of India.

Clause 4 provides that the Chairman or other Members of the Lokpal will be ineligible to hold certain offices or position and before entering upon the office of the Chairman or a Member, he shall resign or sever his connection with such office or position.

Clause 5 provides for the term of office and other conditions of service of the Chairman and other Members of the Lokpal. The conditions of service, salary, allowances and pension of the Chairman will be the same as those of the Chief Justice of India. The conditions of service, salary and allowances of other Members will be the same as these of the judges of the Supreme Court.

Clause 6 provides for the removal of a Member and is self-explanatory.

Clause 7 provides for the staff of the Lokpal and the powers of the Lokpal to utilise the services *inter alia*, of any investigating agencies of the Government or any other person or agency.

Clause 8 deals with jurisdiction of the Lokpal. Sub-clause (1) of this clause provides that the Lokpal may enquire into any matter involved in or arising from or connected with any allegations made in a complaint. Sub-clause (2) provides that the Lokpal may conduct an inquiry into any act or conduct of a person other than a public functionary in so far as it considers necessary so to do for the purposes of inquiry into any such allegations. Sub-clause (3) provides that inquiry under the Commissions of Inquiry Act, 1952 may not be made in respect of a matter in respect of which a complaint has been made to the Lokpal except on the recommendation or with the concurrence of the Lokpal.

Clause 9 provides that Lokpal shall not inquire into any matter in respect of any person if any of its Members has any bias in respect of such person or matter, or into any matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952. It also provides that the Lokpal shall not inquire into any complaint made after a period of five years from the date of the commission of the offence mentioned in the complaint.

Clause 10 provides that any person other than a public servant may file a complaint which shall be in the prescribed form and shall be accompanied by an affidavit. This clause also provides for a deposit of Rs. 1000 by a complainant.

Clause 11 provides for the preliminary scrutiny of complaints by the Lokpal and empowers it to dismiss the complaint in specific cases after recording its reasons therefor and communicate the same to the complainant and the competent authority.

Clause 12 provides for the procedure for making inquiries into the complaints by the Lokpal.

Clause 13 provides for deferment or for suspension for a specified period or till the completion of inquiry by the Lokpal of any investigation or inquiry by any police officer under the Code of Criminal Procedure, 1973, in respect of matters connected with a complaint being inquired into by the Lokpal by an order and for reasons to be recorded. Sub-clause (2) of this clause also provides that for the purposes of Chapter XXXVI of the Code of Criminal Procedure, 1973, the period of deferment or suspension of any investigation into an offence shall be excluded from the period of limitation for taking cognizance of the offence.

Clause 14 Sub-clause (1) empowers the Lokpal to require any public servant to furnish any information or produce any document [sub-clause (1)]. Sub-clause (2) provides that the proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal Code.

Clause 15 seeks to confer powers of search and seizure on the Lokpal.

Clause 16 relates to reports of the Lokpal and action thereon. Sub-clause (1) provides that when after inquiry no allegation made in the complaint is substantiated, the Lokpal shall close the case and intimate the complainant, the public functionary and the competent authority accordingly. When all or any of the allegations made in the complaint are substantiated, the Lokpal will make a report communicating his findings and recommendations to the competent authority and will also intimate the complainant as well as the public functionary about his having made the report. Sub-clause (2) provides that the competent authority will, in the case of a public functionary other than the Prime Minister, inform the Lokpal of the action taken or proposed to be taken on the report within a period of three months. Sub-clause (3) provides that in the case of the Prime Minister, the speaker shall within three months from the date of receipt of the report, cause it to be laid before the House of the People. Sub-clause (4) provides for the presentation by the Lokpal of annual reports on the administration of the Act to the President and for the laying of such reports before the Houses of Parliament.

Clause 17 provides that the expenditure on Lokpal shall be charged on the Consolidated Fund of India.

Clause 18 provides for secrecy of information and evidence collected during any inquiry by the Lokpal.

Clause 19 provides for punishment for intentional insult or interruption to or bringing into disrepute the Lokpal or any of its Members.

Clause 20 seeks to confer powers on the Lokpal to try summarily and punish persons giving false evidence, etc., in any proceedings before the Lokpal or committing offences under section 175, 178, 179 or 180 of the Indian Penal Code in the view or presence of the Lokpal. The clause also provides that a person convicted thereunder may prefer an appeal to the Supreme Court.

Clause 21 Disclosure of information in respect of complaints against public functionary or proceedings relating thereto causes, irreparable damage to the public functionary in those cases where the public functionary has been absolved of the charges against him. This accordingly makes printing or publication of any such information in relation to any complaint before the inquiry under the Act has reached a definitive stage an offence triable summarily by the Lokpal. The clause also seeks to make the printing or publishing of any false information alleging or suggesting that a complaint has been made against a public functionary an offence triable summarily by the Lokpal. The clause further provides that an appeal against any conviction for any offence thereunder may be made to the Supreme Court of India.

Clause 22 provides for the punishment for making wilful or malicious complaints.

Clause 23 provides for the bar of prosecution on allegation in cases where the Lokpal has held that any allegation made in the complaint have not been proved or substantiated.

Clause 24 provides for the modified application of the provisions of the Code of Criminal Procedure for trial of an offence under sections 20 and 21.

Clause 25 relates to conferment of certain additional functions on the Lokpal and is self-explanatory.

Clause 26 provides for disposal of deposits made by the complainants.

Clause 27 provides for compensation or reward or both payable to complainant in the event of all or any of the allegations made in a complaint being substantiated.

Clause 28 provides for protections from legal proceedings, etc.

Clause 29 provides for delegation of powers by the Lokpal to certain officers or agencies.

Clause 30 provides for the power of the President to make rules.

Clause 31 seeks to make it clear that the Lokpal shall not have any jurisdiction to conduct any inquiry into any allegation against or any act or conduct of the President, the Vice-President, or the Speaker of the Lok Sabha or the Chief Justice or any other Judge of the Supreme Court of India or the Comptroller and Auditor-General of India or the Chief Election Commissioner or other Election Commissioner (if any) or the Chairman or any other member of the Union Public Service Commission.

Clause 32 provides that the provisions of this Bill shall not affect the constitution or the continuance of any commission of inquiry appointed under the Commissions of Inquiry Act, 1952 before the coming into force of the provisions of this Bill.

Clause 33 seeks to make a consequential amendment in the Commissions of Inquiry Act, 1952.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of an institution to be called the Lokpal, which shall consist of a Chairman and two other Members, to be appointed by the President. Sub-clause (3) of clause 5 of the Bill envisages that the salary, allowances and pension payable to and other conditions of service of the Chairman shall be the same as those of the Chief Justice of India, and of the other Members shall be the same as those of the Judge of the Supreme Court.

2. Sub-clause (1) of clause 7 of the Bill provides that the Lokpal, for the purpose of assisting it in the discharge of its functions, shall appoint a Secretary and such other officers and employees as the President may, in consultation with the Lokpal, determine from time to time. Sub-clause (2) of this clause empowers the Lokpal to ensure for the purpose of dealing with any complaints, or any classes of complaints the services of any officer or employee or investigating agency of the Central Government or a State Government or the services of any other person or agency. Sub-clause (3) of this clause provides that the terms and conditions of service of the officers and employees of the Lokpal and of the officers, employees, agencies and persons referred to in sub-clause (2) shall be such as the President may determine in consultation with the Lokpal.

3. Clause 17 of the Bill provides, that the salaries, allowances and pension payable to, or in respect of Members, shall be expenditure charged on the Consolidated Fund of India.

4. Clause 27 of the Bill provides for payment of compensation or reward to a complainant as determined by the Lokpal, by the Central Government.

5. At this stage it is not possible to give precise details of the expenditure to be incurred on the institution of Lokpal. It is, however, expected that the Bill, when enacted, will involve a non-recurring expenditure of Rs. 7½ lakhs and a recurring expenditure of Rs. 35 lakhs per year. In case it becomes necessary to construct a building to house the institution of the Lokpal, additional expenditure of a non-recurring nature of the order of Rs. 75 lakhs may also be necessary.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 30 of the Bill empowers the Central Government to make rules for the purpose of giving effect to the provisions of the proposed enactment. The various matters in relation to which such rules may be made have been enumerated in detail under various items of sub-clause (3) of clause 30 and relate mainly to the manner in which the President shall obtain the opinion of the Chief Justice of India under clause 9, the form in which complaints may be made, the form of certificate which shall accompany such complaints, the manner in which and the authorities and the agencies with whom the deposits shall be made under sub-clause (3) of clause 10, and the additional matters in respect of which powers of a Civil Court may be exercised by the Lokpal.

These are matters of detail necessary for effective administration of the provisions of the Bill and it is difficult to provide for all the situations in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No. 97 OF 1989

A Bill further to amend the Commissions of Inquiry Act, 1952.

BE it enacted by Parliament in the Fortieth Year of the Republic of India as follows:—

1. This Act may be called the Commissions of Inquiry (Amendment) Act, 1989.

2. In section 3 of the Commissions of Inquiry Act, 1952, sub-sections (5) and (6) shall be omitted.

Short
title.

Amend-
ment of
3 of Act
section
60 of 1952.

STATEMENT OF OBJECTS AND REASONS

Sub-section (4) of section 3 of the Commissions of Inquiry Act, 1952 casts an obligation on the appropriate Government to lay the report of the Commission of Inquiry appointed under sub-section (1) thereof before the House of the People or, as the case may be, the Legislative Assembly concerned, together with a memorandum of action taken thereon, within a period of six months of the submission of the report. However, in 1966, section 3 had been amended so as to provide therein that under certain circumstances the report of the Commission of Inquiry may not be so laid.

2. A Commission of Inquiry is always set up for the purpose of making an inquiry into any definite matter of public importance. As such, the report submitted by such a Commission should not be withheld from the House of the People or the Legislative Assembly under any circumstances and the public should have access to information which is of vital importance and interest to them. It is felt that the amendments made in 1966 should be done away with.

3. The Bill seeks to achieve the above object.

NEW DELHI;
The 21st December, 1989.

MUFTI MOHD. SAYEED.

BILL No. 100 OF 1989

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fortieth Year of the Republic of India as follows:—

Short
title and
com-
mence-
ment.

1. (1) This Act may be called the Constitution (Sixty-third Amendment) Act, 1989.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amend-
ment of
article 356.

2. In article 356 of the Constitution, in clause (5), the proviso shall be omitted.

Omission
of article
359A.

3. Article 359A of the Constitution shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Constitution (Fifty-ninth Amendment) Act, 1988 was passed in March, 1988, making certain changes in regard to making a Proclamation of Emergency in Punjab and to the duration of President's rule in that State.

2. On reconsideration, the Government is of the view that there is no need for the special powers in regard to the Proclamation of Emergency in Punjab as envisaged in the amendment. It is also considered that the amendment to article 356 made by the said Act is no longer needed. It is, therefore, considered that the amendments made by the aforesaid Act should be repealed.

3. As regards President's Proclamation issued on 11-5-1987 under clause (1) of article 356 of the Constitution, this has been approved by both the Houses of Parliament in October, 1989.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 28th December, 1989.

MUFTI MOHAMMED SAYEED.

SUBHASH C. KASHYAP,
Secretary-General.

